IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1590 OF 2006

Laxman Bhagvan Suryavanshi ..Petitioner

Vs.

The State of Maharashtra & Anr. ..Respondents

Mr.Amin H.Solkar for the petitioner

Mr.A.M.Chimulkar for the respondent no.2

Mr.A.S.Gadkari, A.P.P. for the state

**CORAM : J.N.PATEL &**
**SMT.ROSHAN S.DALVI, JJ.**

**DATED : 3RD OCTOBER, 2006**

P.C.:
1. Heard.

2. The petitioner has approached this court for a writ of Habeas Corpus seeking his release from custody on the ground that he is detained in Judicial Custody in Crime No.135 of 2002 without any legal order of detention.

3. It is contended that by virtue of order dt.11.7.06 learned Judicial Magistrate First Class,

Pune was pleased to grant further custody of the petitioner till 24.7.06 though he was not produced before the learned Magistrate. Secondly, the learned Magistrate is not vested with the power of remanding the petitioner who is accused of offences punishable under the M.C.O.C.Act and in addition to provisions of Prevention of Corruption Act. Hence, the order dt.27.6.06 is illegal. Therefore, his further detention in judicial custody from 27.6.06 is illegal. On 9.8.06 this petition was presented and taken up for admission wherein this court passed an order 'Rule, returnable on 10.8.06' i.e. on the next date. It is therefore, contended by the learned counsel for the petitioner that on the date the rule was made returnable, the petitioner was under wrongful detention i.e. without an order from the competent court having Jurisdiction to remand the petitioner to custody.

4. Today, when we have taken up the matter for hearing, our attention is drawn to the fact that on 22.9.06, the petitioner was produced before the Special Judge under the M.C.O.C.Act that he has been remanded to Judicial Custody till 6.10.06 and

therefore, the grievance made by the petitioner does not survive.

5. We have heard the learned counsel for the petitioner as well as the Special Public Prosecutor and also considered the various authorities cited at the bar. In our view, it is not necessary for us to examine the various authorities cited at the bar as this court in the case of Dilip Pandurang Kamath & Ors. Vs. State of Maharasthra reported in 2005 ALL MR (Cri) 3017 has considered the various cases of such detention and found that the detention of the petitioner in the said case under M.C.O.C.Act, 1999 was justified as it was within the overriding period provided under the Special Act and the detention was held to be valid.

6. It is the contention of the learned counsel for the petitioner that if on the date the rule is made returnable the order of detention in Judicial Custody was not passed by the competent authority, that would make the detention illegal and would entitle the petitioner to be forthwith set at liberty. As on 10.8.06 there was no order passed

by the competent court, the petitioner is entitled to be released from Judicial Custody and for that purpose reliance has been placed in the case as Dilip Pandurang Kamath & Ors. Vs. State of Maharashtra (Supra).

7. In our view, the judgement in the case of Dilip Pandurang Kamath & Ors. vs. State of Maharashtra (Supra) cannot be construed in the manner canvassed before us which has to be understood in the context of the peculiar facts and circumstances of the case as it is on the date the court considered the matter of passing final orders so as to take a decision on the rule so issued. If on the date the respondents state is able to justify that the petitioner is held in judicial custody by a valid order, then it cannot be said that the petitioner is in wrongful detention. Therefore, we do not find ay merits in the petition. Petition is dismissed. Rule is discharged.

**( SHRI J.N. PATEL, J )**

**( SMT.ROSHAN DALVI, J )**